COMPREHENSIVE, LGBTQ-INCLUSIVE SEXUAL HEALTH CARE FOR YOUTH IN STATE CUSTODY AS A HUMAN RIGHT: THE TEEN SENSE INITIATIVE

THE CENTER FOR HIV LAW AND POLICY

FEBRUARY 2009

This publication was made possible through a founding grant for Teen SENSE from the M.A.C. AIDS Fund, and through additional support from the Arcus Foundation Gay and Lesbian Fund, and from Broadway Cares/Equity Fights AIDS.

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I. INTRODUCTION

Adolescents institutionalized in foster care and juvenile justice facilities are overwhelmingly members of the communities most affected by, and at risk for, HIV/AIDS—low-income youth; Black and Latino youth; lesbian, gay, bisexual, or transgender youth; and survivors of violence and other abuse. While these youth, across the spectrum of sexual orientation and gender, are at great risk of HIV and other STIs, they are overwhelmingly denied access to appropriate and effective HIV prevention, sexual health education, and sexual and reproductive health care. Where care is provided, it too often ignores or isolates LGBT youth and their health needs. To address this crisis, the Center for HIV Law and Policy (CHLP) launched the Teen SENSE (Sexual health and Education Now in State Environments) initiative, a sexual health and HIV prevention initiative grounded in the rights of youth to these services.

This paper describes the purpose and strategy of Teen SENSE, as well as the results and lessons learned in its first years. Teen SENSE provides a new strategy for addressing sexual health care by acknowledging that sexual health care requires not only appropriate medical services, but also counseling, education, and a safe, inclusive environment for youth of all sexual orientations and gender identities. Based on this principle, Teen SENSE has created a legal rights "road map" for the right of youth in state custody to comprehensive sexual health care, and created model standards that reflect the best practices to ensure state custody facilities respect, protect, and fulfill these rights. Moreover, Teen SENSE is founded on a principle of local ownership, with CHLP adopting a principle of "leading from behind." Despite the enormous obstacles inherent in a project of this magnitude, Teen SENSE has made significant gains by adhering to these principles.

II. ISSUES: A PUBLIC HEALTH CRISIS AMONG YOUTH IN STATE CUSTODY

All sexually active young people in the United States are at some risk for sexually transmitted infections (STIs) and HIV, and many are currently living with an STI or HIV. Recent U.S. Centers for Disease Control and Prevention (CDC) reports estimate that 46.8% of U.S. high school students have had sexual intercourse at least once; 37.2% of sexually active high school students had not used a condom at last sexual intercourse; and 2.1% had injected an illegal drug.[1] Since the beginning of the HIV epidemic in the United States, a conservatively estimated 40,000 children and teens have been diagnosed with HIV and represent an estimated 2% of the people who have died from AIDS.[2] The CDC reported that about 4883 young people in the United States were diagnosed with HIV in 2004, accounting for approximately 13% of new diagnoses in the country.[3] Each year in the United States, nearly 9.1 million 15-24 year olds are infected with STIs other than HIV.[4]

Youth in state custody in particular face increased risks that require a concerted response.[5] Detained youth have a greater likelihood of participating in high-risk behaviors including substance abuse and high-risk

[1] Centers for Disease Control and Prevention (CDC), *Youth Risk Behavior Surveillance*, 55 MMWR 1 (2005), *available at* http://www.cdc.gov/mmwr/PDF/SS/SS5505.pdf.
[2] CDC, *HIV/AIDS Education and Prevention Program for Adults in Prisons and Juveniles in Confinement Facilities*, 45 MMWR, 268 (1996), *available at* http://www.cdc.gov/mmwr/PDF/wk/mm4513.pdf.
[3] CDC, *HIV/AIDS Among Youth: Fact Sheet June 2006* (2006) (hereinafter "CDC 2006 Fact Sheet"), http://www.cdc.gov/hiv/resources/factsheets/PDF/youth.pdf.
[4] Society for Adolescent Medicine, *Abstinence-Only Education Policies and Programs: A Position Paper of the Society for Adolescent Medicine*, 38 J. OF ADOLESCENT HEALTH 83, 83 (2006)("[P]roviding 'abstinence only' or 'abstinence until marriage' messages as a sole option for teenagers is flawed from scientific and medical ethics viewpoints."), *available at* http://www.adolescenthealth.org/PositionPaper_Abstinence_only_edu_policies_and_programs.pdf.
[5] RANDI FEINSTEIN, ET. AL., THE LESBIAN AND GAY YOUTH PROJECT OF THE URBAN JUSTICE CENTER, JUSTICE FOR ALL? A REPORT ON LESBIAN, GAY, BISEXUAL, AND TRANSGENDERED YOUTH IN THE NEW YORK JUVENILE JUSTICE SYSTEM 18-20 (2001), available at http://www.urbanjustice.org/pdf/publications/lesbianandgay/justiceforallreport.pdf.

sexual activity.[6] Adolescents in correctional care facilities report sexual activity at earlier ages and greater rates of STIs than their counterparts.[7] Likewise, youth in out-of-home care may be more prone to risk-taking behaviors and therefore at higher risk for engaging in sexual activity, drug use, and other behaviors that place them at higher risk of contracting STIs and HIV.[8] For many youth, the pathway into state custody included a period of time living on the streets and engaging in substance abuse and high risk sexual behavior, often in exchange for shelter, food, or money, increasing their risks for STIs, HIV, and sexual assault. Federal agencies such as the CDC and the National Institute of Justice recognize that juveniles in confinement are disproportionately at risk for HIV and STIs.[9] HIV rates among youth of color, who are disproportionately represented in juvenile detention facilities,[10] are also rising. The 33 states with long-term surveillance report that 69% of people aged 13–24 years given a diagnosis of HIV/AIDS were African-American, non-Hispanic; 15% were Hispanic; and 14% were white, non-Hispanic.[11] This is in stark contrast to the general population, which is 65% white, non-Hispanic; 17% African-American, non-Hispanic; and 15% Hispanic.[12]

These health threats are particularly relevant for lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth, who may be more likely to be funneled through the juvenile justice system and, once in the system, face additional threats to their sexual health and safety due to their LGBTQ status.[13] Rejection and abuse by parents and peers has led to disproportionate rates of homelessness among LGBTQ youth, as well as higher rates of substance abuse, paving their way into the state custody system and state detention in particular.[14] LGBTQ youth who are comfortable enough to explore their sexuality often find themselves in juvenile detention because consensual expression of their sexual identity has been construed as sexual assault or statutory rape.[15] Once in state custody facilities, LGBTQ youth routinely face harassment, discrimination, isolation, and abuse.[16] This social stigma, discrimination, and harassment encourage high-risk activity among LGBT youth.[17] Shamed into silence, these youth are also unable to obtain adequate sexual health care. Even where staff may be well-intentioned, the inability to recognize

[6] Society for Adolescent Medicine, *Health Care for Incarcerated Youth: A Position Paper of the Society for Adolescent Medicine*, 27 J. OF ADOLESCENT HEALTH 73 (2000).
[7] American Academy of Pediatrics, *Health Care for Children and Adolescents in the Juvenile Correctional Care System*, 107 PEDIATRICS 799, 800 (2001).
[8] MADELYN FREUNDLICH, CHILDREN'S RIGHTS, JUVENILE RIGHTS DIVISION OF THE LEGAL AID SOCIETY, LAWYERS FOR CHILDREN, TIME RUNNING OUT: TEENS IN FOSTER CARE (hereinafter "TIME RUNNING OUT") 28-29 (2003).
[9] REBECCA WIDDOM & THEODORE HAMMET, NATIONAL INSTITUTE OF JUSTICE, HIV/AIDS & STDS IN JUVENILE FACILITIES 1, 3 (1996),
[10] In New Jersey, for example, 67% of the adolescents admitted to the juvenile justice system were African-American and 18% were Latino. This ratio has not varied significantly for decades. BRUCE B. STOUT, ASSOCIATION FOR CHILDREN OF NEW JERSEY, CONNECTING THE DOTS, NEW JERSEY JUVENILE JUSTICE: PAST, PRESENT AND FUTURE (2003), available at http://www.acnj.org/main.asp?uri=1003&di=305.htm&dt=0&chi=2.
[11] *See id.*; s*ee also* CDC, HIV/AIDS Surveillance in Adolescents & Young Adults, *available at* http://www.cdc.gov/hiv/topics/surveillance/resources/slides/adolescents/slides/Adolescents.pdf.
[12] *See Youth Risk Behavior Surveillance*, *supra* note 1.
[13] Rudy Estrada & Jody Marksamer, *Lesbian, Gay, Bisexual and Transgender Young People in State Custody: Making the Child Welfare and Juvenile Justice Systems Safe for All Youth Through Litigation, Advocacy, and Education*, 79 TEMP. L. REV. 415 (2006); Peter A. Hahn, Note, *The Kids Are Not Alright: Addressing Discriminatory Treatment of Queer Youth in Juvenile Detention and Correctional Facilities*, 14 B.U. PUB. INT. L. J. 117 (2005).
[14] *See* Hahn, *supra* note 13 at 122-24.
[15] *See id.* at 123.
[16] *See id.* at 124-127; Estrada & Marksamer, *supra* note 13.
[17] *See, e.g.,* Susan M. Blake, *Preventing Sexual Risk Behaviors Among Gay, Lesbian, and Bisexual Adolescents: The Benefits of Gay-Sensitive HIV Instruction in Schools*, 91 AM. J. OF PUB. HEALTH 940, 944 (2001) (demonstrating correlation between lack of gay-sensitive instruction and increased risks for HIV, pregnancy, suicide, and victimization);

and respond to the unique sexual health care needs of LGBTQ youth leaves these youth without adequate sexual health care.

The significant and compelling sexual health needs of these youth require a concerted response on behalf of the state facilities in which these youth reside. Unlike their counterparts outside state custody facilities, youth in state facilities often do not have continuous access to the public school system or to a parent for their health education, or access to outside resources that provide medical care, counseling, information, and support.[18] Incarcerated youth and youth living in congregate care depend on the state to meet these needs. How the state responds to these needs is critically important, as the youth in its custody are often cut off from the guidance of a trusted, responsible adult and from regular access to health education programs administered through the public school system.[19] Because of the role of child welfare and correctional care systems in providing a safe harbor for minors, these systems have a unique opportunity to help improve the health of vulnerable children and adolescents in their care. As the United States Department of Justice recommends:

> [A] unique opportunity exists to prevent HIV infection, improve public health, and provide important preventative and therapeutic services for youths who may have no other means of accessing them . . . . [I]n order to take full advantage of this opportunity, more juvenile systems should make counseling, education and voluntary HIV testing available.[20]

Yet, despite this enormous public health need, the sexual health care needs of youth in state custody facilities are being overlooked by the very institutions that are responsible for their care and well-being.[21] Despite professional consensus that sexual health care is vital to these young people, this rarely translates into actual routine medical tests and treatment. Typically, no consistent, enforceable policies exist to ensure that youth are provided basic sexual medical care such as routine, voluntary STI and HIV testing and counseling. State laws differ on what sexuality education youth in state custody must receive and if they must receive this education at all. Even where state law mandates sexuality education, there are no official policies to guide facilities on the content of the education, how it must be provided, and how to adapt it to the specific needs of the youth in their care. LGBTQ youth, meanwhile, continue to face discrimination, harassment, and violence on the basis of their sexual orientation or gender identity,[22] which hinders their ability to receive adequate sexual health care.

Neglecting the sexual health care needs of youth yields devastating consequences. Mounting evidence shows that childhood circumstances such as exposure to infectious diseases, different socialization towards risk-taking and deferred gratification, and sense of autonomy and control over one's surroundings have an enduring effect on health. These effects simply cannot be erased by advantaged conditions in adulthood.[23] According to a National Institutes of Health longitudinal study of morbidity and mortality over a twenty-four-year period, "childhood experiences often set-up cascading events over life that have dramatic effects

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[18] TIME RUNNING OUT, *supra* note 8.
[19] American Academy of Pediatrics, *supra* note 7, at 800.
[20] WIDDOM & HAMMET, *supra* note 9, at 10.
[21] CHILD WELFARE LEAGUE OF AMERICA, CWLA BEST PRACTICE GUIDELINES: SERVING LGBT YOUTH IN OUT-OF-HOME CARE, [hereinafter "CWLA LGBT Best Practices"] 4-5, 6, 22 & 54 (2006); FEINSTEIN, *supra* note 5 at 7, 25-41; Time Running Out, *supra* note 8, at 34.
[22] *See* Time Running Out, *supra* note at 8, at 34; Hahn, *supra* note 13 at 127-28.
[23] MARK D. HAYWARD, THE LONG ARM OF CHILDHOOD: THE INFLUENCE OF EARLY LIFE CONDITIONS ON ADULT MORBIDITY & MORTALITY 24 (2004), http://www.rand.org/labor/aging/rsi/rsi_papers/2004_hayward4.pdf.

on adult health."[24] Therefore, "economic and education policies targeted at children's well-being are implicitly health policies with multiple effects reaching far into the adult life course."[25] Childhood medical services that include regular examinations, STI/HIV testing, and education that promotes understanding, respect, empowerment, and reduced risk taking confer health benefits that cannot be recaptured in later life. Clearly, youth in state custody—and LGBTQ youth in particular—require programs that effectively target and meet their needs.

III. DESCRIPTION: THE TEEN SENSE INITIATIVE

The Center for HIV Law and Policy (CHLP) developed Teen SENSE (Sexual health and Education Now in State Environments) initiative in response to the enormous gap in resources and advocacy efforts that target the sexual health needs of youth in state custody. Our research and outreach to community leaders showed an overwhelming support for a core principle of Teen SENSE: respect and accommodation for all gender expression and sexual orientation is central to HIV prevention and sexual health, and that all youth have the right to comprehensive, LGBT-inclusive health services that include sexual health care and education when they are confined in state facilities. Comprehensive, LGBT-inclusive sexual health care is vital to preserve health, reduce HIV and STI transmission risk, and increase the odds that severely at-risk youth will develop the essential skills and knowledge to protect their sexual health—including youth-initiated HIV/STI prevention, testing, and treatment—develop self-respect, and foster tolerance. However, despite this consensus, we were unable to identify any focused efforts to move these principles from tenet to public policy.

CHLP created Teen SENSE to fill this gap by putting in place state-wide mandates and standards for the provision of comprehensive sexual health care for youth in state custody. Teen SENSE brings together private and public sector experts from diverse fields, including adolescent medicine, sex education, foster care, LGBTQ issues, children's rights, and juvenile justice, to develop a complete advocacy model and coordinate its implementation. Together, this coalition is creating model standards for the sexual health care of youth living in state facilities, and then supports local advocates in implementing these standards through mandatory provisions that ensure the sexual health care of youth in state custody facilities. These standards are divided into three separate but interrelated sets that concern sexual medical care, sexuality education, and staff training. The composition of the standards is a collaborative process in which experts in various fields have drafted, edited, or provided comments on each set of standards.

To support local implementation efforts, Teen SENSE also sets out a legal framework that establishes the affirmative legal right of adolescents to comprehensive, LGBT-inclusive sexual health care services that includes sexuality education and staff training to ensure the sexual health needs of all youth in state custody facilities are met. CHLP has currently completed a draft memorandum that sets forth the legal foundation for these rights under international, federal, and state law. In addition to highlighting the importance of the rights Teen SENSE seeks to protect, a legal foundation provides "teeth" to Teen SENSE's work and underscores the need for states and their facilities to adopt and comply with official standards in order to ensure that they are protecting the rights of the youth in their care and are not exposing themselves to legal liability.

Although Teen SENSE is a national project, its implementation is grounded in local efforts. Teen SENSE recognizes that change must come from within and must be advanced by local stakeholders that can advocate, implement, and monitor changes in their own system. Juvenile justice and foster care systems in

[24] *See id.*
[25] *See id.* at 1, 24.

the United States generally are run on the state—as opposed to federal—level, and so Teen SENSE is being implemented state-by-state, with implementation in each jurisdiction spearheaded by local actors. The pilot jurisdiction for Teen SENSE development and implementation is New Jersey, which was selected because of the high rates of juvenile HIV, legislation that supports LGBTQ rights and comprehensive sexuality education, a relatively progressive state supreme court, and a chief executive who supports comprehensive sexuality education. To this end, Teen SENSE has involved numerous local actors in the drafting of the model standards and their implementation in the New Jersey system, discussed in more detail below in Part III.

IV. RESULTS AND LESSONS LEARNED

A. Redefining Sexual Health Care

The Teen SENSE initiative is founded on a principle that has since been reinforced countless times by experts in the field: comprehensive sexual health care encompasses not only sexual medical care, but also the information necessary to make healthy choices as well as a safe environment for youth to access medical care and information. For youth taken from their homes and placed in the state's custody and care, this means:

- Sexual medical care that adequately meets the full range of needs of individual youth in state facilities, accounts for the particular needs of this high-risk population, and is inclusive of the needs of all sexual orientations and gender identities

- Comprehensive sexuality education that is scientifically sound, culturally appropriate, and inclusive of the needs of all sexual orientations and gender identities

- A staff that is trained to understand, respect, and respond to the health and safety needs of all youth in their custody, particularly the needs of LGBTQ youth

This definition of sexual health care reflects the realities of young life and of confinement. It recognizes that health cannot be supported and maintained exclusively through medical care; rather, health requires that a person's environment is supportive of and responsive to each person's health needs. This is even more critical in the context of youth, who are still acquiring the information and skills necessary for sexual health. And it is perhaps most critical for youth in state custody, who rely entirely on the state to provide them with the medical care, education, and environment to support their sexual health.

The connection between health, education, and environment finds ample support among health and education experts. Leading researchers endorse HIV-prevention techniques such as disseminating information on risk reduction methods, reducing discrimination against people with HIV, and addressing the physiological, emotional, and cultural contexts of behavior.[26] National medical organizations devoted to the care of youth such as the American Academy of Pediatrics and the Society for Adolescent Medicine (SAM) also recommend that all minors have continuous, on going, age-appropriate sexuality education.[27] In particular, SAM endorses community-based HIV/AIDS prevention and education that includes the importance of both abstinence and risk-reduction and is sensitive to the needs of all adolescents, including

[26] WIDDOM & HAMMET, *supra* note 9, at 4.

[27] Society of Adolescent Medicine, *HIV Infection & AIDS in Adolescents: An Update of the Position of the Society for Adolescent Medicine,* 38 J. OF ADOLESCENT HEALTH 88 (2006); *Health Care for Incarcerated Youth*, *supra* note 6 at 73; *Health care for Children and Adolescents in the Juvenile Correctional Care System*, *supra* note 7 at 800.

LGBTQ youth.[28] The CDC Guidelines for Effective School Education to Prevent the Spread of AIDS state that HIV/AIDS prevention education is particularly appropriate and effective when couched within a comprehensive health education program.[29] In the context of youth in detention, the CDC recommends that juvenile corrections officials work with public health systems and community based organizations to strengthen HIV/AIDS prevention programs, including formulating and implementing comprehensive sexuality education.[30] Studies have also shown that HIV-prevention is also more likely to be successful when programs are LGBTQ-inclusive.[31] All staff who have contact with youth—and in particular staff who provide health care and education—must be trained to understand, respect, and respond to the health and safety needs of all youth. If LGBTQ youth are unable to communicate their needs safely to staff, and if staff members are not trained to respect these needs, the health and safety of these youth will continue to suffer.

Understanding inclusive and comprehensive sexuality education and staff training as a health care need also demystifies and destigmatizes these issues. Recognizing that comprehensive sexuality education and staff sexual orientation and gender identity sensitivity training is a health care issue rather than solely a civil rights issue can also provide legal and policy advocacy advantages. This approach furthers the understanding that homophobia and sexual health ignorance are not merely cultural or education issues—they are public health threats to which the state has an obligation to respond with public policy that is grounded in medical and social science.

B. The Legal Foundation for Sexual Health Care for Youth in State Custody

1. Introduction

The Teen SENSE position—that sexual health requires not only adequate medical care but also adequate counseling, education, and a safe and supportive environment—rests on a strong legal foundation. With few exceptions, U.S. courts considering the state's obligation to youth in its custody have been more receptive to legal arguments that rely on the right to health and safety of youth in their care than to arguments relying on other legal bases, such as the right to education or LGBTQ equality. Linking counseling, education, and staff training to sexual health care opens new legal avenues to address these needs.

A central piece of the Teen SENSE initiative is a memorandum—now in its final drafting stages—outlining the legal foundation for the right of youth in state custody to comprehensive health care (hereinafter the Youth Rights Road Map). The Youth Rights Road Map outlines the bases for the affirmative right of youth in state facilities to comprehensive sexual health care under international and U.S. constitutional law. It also includes appendices with guidance from the private sector and state law, professional guidelines for the sexual health care of youth in detention facilities, and a discussion of how state law can provide additional support for the right of youth in state facilities to comprehensive sexual health care, using New Jersey law as an example.

The Youth Rights Road Map's purpose is to support advocates around the country implementing the Teen SENSE initiative by: (1) demonstrating the urgency of sexual health care in state custody; (2) framing it as an affirmative right that is not being met; (3) providing "teeth" to the Teen SENSE program by

[28] *HIV Infection & AIDS in Adolescents: An Update of the Position of the Society for Adolescent Medicine, supra* note 27 at 88.
[29] CDC, GUIDELINES FOR EFFECTIVE SCHOOL HEALTH EDUCATION TO PREVENT THE SPREAD OF AIDS (2003), http://www.cdc.gov/HealthyYouth/sexualbehaviors/guidelines/guidelines.htm.
[30] *HIV/AIDS Education and Prevention Programs for Adults in Prisons and Juveniles in Confinement*, *supra* note 2.
[31] *See, e.g.*, Blake, *supra* 17.

demonstrating the state's potential legal liability for failure to meet this need; and (4) underscoring the need for mandated and uniform standards to ensure the needs of all youth are being met consistently as a matter of state policy rather than with ad hoc and informal actions. The Youth Rights Road Map also provides strong support to all advocates fighting for the legal and human rights of youth in state custody to safe and healthy environments, adequate medical care, and adequate staff training.

CHLP researched and drafted the Youth Rights Road Map, which was then reviewed and critiqued by numerous legal experts with experience in child advocacy, human rights, and state custody of minors. The following sections outline our legal findings, as well as the feedback CHLP received from these experts.

2. The Youth Rights Road Map
    a. U.S. Constitutional Law

In the context of U.S. constitutional law, a definition of sexual health care that recognizes the vital role of education and staff training finds greater protections under the right to substantive due process. While the plain language of the due process clause merely prohibits a state from depriving an individual of life, liberty, and property without due process of law, it is well settled that the clause also imposes positive duties on the state in various circumstances, including when a state takes custody of an individual. Specifically, when a state takes custody of a juvenile, it has an obligation to ensure the health and safety of juveniles in its care.[32] This obligation is subject to closer scrutiny than the corresponding obligation to protect the health and safety of adults in its care due to criminal convictions or civil proceedings.[33]

Although the Supreme Court has not delineated the precise contours of a state's responsibility to the minors in its custody, there is ample jurisprudence that can be used to support the argument that the state has a responsibility under the substantive due process clause to provide comprehensive sexual health care to youth in its custody. Minors in state custody have a right to safety, medical care, mental health care, and life skills training—even if the general population does not have such rights—because they "must rely on prison authorities to treat their medical needs . . . ."[34] CHLP argues that education, counseling, and staff training are necessary to guarantee these rights because they are integral to the sexual health of youth in state custody. This legal argument—the full exploration of which is beyond the scope of this paper—finds support in jurisprudence that has held that the state facilities have the responsibility to create policies to monitor and maintain the physical and psychological well being of minors in their custody; to provide minimally adequate training to allow those in custody to enjoy their due process rights to safety and adequate health care; to provide information necessary to make informed health care decisions; and to rehabilitate youth in its care. Taken together and examined in light of the importance of comprehensive

[32] In the seminal case *Youngberg v. Romeo*, the Supreme Court held that those who are in state custody but have not been convicted of a crime are entitled to an even more protective standard of care than those convicted of a crime. Youngberg v. Romeo, 457 U.S. 307 (1982). Although the Supreme Court has not explicitly applied *Youngberg* to minors in custody, the reasoning of *Youngberg* applies equally to these minors, whom the state assumes custody of through civil proceedings. This more protective standard applies even to those in juvenile detention facilities because, when a minor commits an act that constitutes a crime if committed by an adult, the minor is adjudicated delinquent in a civil action rather than convicted of a crime. DeShaney v. Winnebago County Dep't of Social Servs., 489 U.S. 189, 209 n.9 (1989). Because juvenile institutions are legally deemed "noncriminal and nonpenal" in nature, "juveniles . . . who have not been convicted of crimes, have a due process interest . . . which entitles them to closer scrutiny of their conditions of confinement than that accorded convicted criminals." A.J. v. Kierst, 56 F.3d 849, 854 (8th Cir. 1995) (internal quotations omitted).

[33] Indeed, the Constitution in general provides youth in state custody with stronger protections than civilly committed adults. As the Eighth Circuit has stated, "the evolving standards of decency against which courts evaluate the constitutionality of conditions certainly provide greater protections for juveniles than for adults." *See Kierst*, 56 F.3d at 854.

[34] Estelle v. Gamble, 429 U.S. 97, 103 (1976).

sexual health care to the health and safety of youth in state custody, these principles support the argument that the state must provide youth with comprehensive sexual health care.[35]

b. International Law

There also is ample support in international law for the right of youth in state custody to comprehensive sexual health care. Several relevant rights and corresponding international instruments that protect the right to sexual health care for youth in state custody are set forth below.

Protected Right	International Human Rights Instrument	Corresponding Obligations of the United States
The right to the highest attainable standard of health	• Art. 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)[36] • Art. 24 of the Convention on the Rights of the Child (CRC)[37] • Art. 12 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[38]	• The United States has signed but not ratified these treaties. It has an obligation not to act contrary to the purpose of the convention under Article 18 of the Vienna Convention.
The right to life and security of person	• Art. 6 of the CRC • Art. 6 of the International Covenant on Civil and Political Rights (ICCPR)[39] • Art. 3 of the Universal Declaration of Human Rights (Universal Declaration) •	• See above • The United States has signed and ratified the ICCPR, making it binding on the United States. • The Universal Declaration is non-binding, but is considered customary international law.
The right to liberty	• Art. 3 of the Universal Declaration[40] • Art. 9 of the ICCPR	• See above. • See above.
The right to privacy	• Art. 17 of the ICCPR • Art. 16 of the CRC	• See above. • See above.

[35] We also argue that the Equal Protection Clause of the U.S. Constitution requires that state institutions must provide additional training to staff and students to ensure a respectful and safe environment to LGBTQ youth.
[36] International Covenant on Economic, Social and Cultural Rights, adopted Dec. 16 1966, 993 U.N.T.S. 3.
[37] Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.
[38] Convention on the Elimination of All Forms of Discrimination Against Women, adopted Dec. 18, 1979, 1249 U.N.T.S. 3.
[39] International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, S. Exec. Doc. E, 95-2 (1978), 999 U.N.T.S. 171.
[40] Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR 3d Sess., 1st plen. Mtg., U.N. Doc. A/810 (Dec. 12, 1948).

The right to non-discrimination, equal protection, and equality before the law	• Art. 3 and Art. 26 of the ICCPR • CEDAW • Art. 2 and Art. 5 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD)	• See above. • See above. • The United States has signed and ratified CERD, making it binding on the United States.
The right to education	• Art. 28 of the CRC • Art. 13 of the ICESCR	• See above. • See above

While a full discussion of this topic is beyond the scope of this paper, CHLP has also found interpretive guidance from United Nations committees interpreting these international commitments that supports the right of youth in state custody to comprehensive sexual health care, and a corresponding obligation of states to ensure these rights are respected, protected, and fulfilled.

c. Professional Standards

Appendix A of the Youth Rights Road Map provides an outline of professional standards for the health care of youth in state custody in order to demonstrate that the legal arguments outlined in the main document and Appendix B are supported by the professional standards issued for the health care of youth in confinement. While a full discussion is beyond the scope of this paper, our research showed that national standards for acceptable requirements for health services for youth in confinement include sexual medical care, counseling, and culturally sensitive and scientifically accurate sexuality education and staff training on sexual health issues. These minimal standards demonstrate the professional and expert consensus that comprehensive sexual health care is vital to the health, safety, and well-being of youth in state facilities and that the state is therefore obligated to provide it.

d. State Law

As Teen SENSE pursues the implementation of its model standards in each state, it will also look to state law for support. Because initial efforts are focusing on New Jersey, CHLP has developed a legal foundation for comprehensive sexual health care that is grounded in state constitutional law, state civil rights statutes, and regulations that govern the state juvenile justice and child welfare system. In New Jersey, these legal frameworks provide strong support for the right of youth in state custody to comprehensive sexual health care. For example, New Jersey's civil rights statute explicitly prohibits discrimination based on sexual orientation or gender identity.[41] However, because other jurisdictions are unlikely to be as supportive as New Jersey law, CHLP will continue to develop and rely on our federal and international legal bases to support the Teen SENSE initiative.

3. Partner Collaboration on the Youth Rights Road Map

CHLP is collaborating with numerous legal experts on the creation of the legal foundation, and has received significant feedback on its penultimate draft.

The feedback for the Youth Rights Road Map has been overwhelmingly positive, focusing on the memorandum's novelty, thoroughness, and usefulness for advocates in the field across the country. Commenters were particularly enthusiastic about the Youth Rights Road Map because it fills a critical resource gap. There was an overall sense that this type of analysis was sorely lacking in the field, and that

[41] *N.J.S.A.* 10:5-1 *et seq.*

advocacy efforts would benefit significantly from it. As one commenter noted, "There really isn't anything like this out there. . . . It's going to be a great tool for advocates."

Commenters were also enthusiastic about the depth and breadth of the Youth Rights Road Map. A legal tool that combined international, national, and state law, as well as professional standards, does not currently exist, and provides a much-needed comprehensive tool for advocates. Moreover, commenters were pleased with the different aspects and nuances of these areas of law that the Youth Rights Road Map explores, such as several different potential theories of constitutional law rather than only the more obvious bases for claims.

It was also particularly gratifying to hear that the Youth Rights Road Map would be useful not only for the Teen SENSE initiative, but for all advocates who work with youth in state custody. Commenters noted that the legal principles outlined and explored provided critical and practical guidance for their work, and would be applicable nationwide and, potentially, internationally.

Commenters did request some changes to the resource, most notable of which concerned its discussion of international law. Despite the strong legal support Teen SENSE finds in international law, it is no easy task to demonstrate how to translate international human rights obligations into gains in U.S. courts. In our review of literature, we noticed a dearth of resources discussing international human rights norms that provide practical guidance on how these norms can be used by litigators in the United States. U.S. advocates are often poorly informed about international legal norms and assume that such norms are not useful in domestic courts; this belief is compounded by—and in turn feeds into—the resistance of many U.S. courts to apply or even consider international human rights norms in domestic litigation outside of very limited contexts.

We are therefore revising the current draft of the Youth Rights Road Map to more adequately address these concerns. While the current draft of the Youth Rights Road Map takes care to discuss the obligation of the United States under the different treaties that it cites, we are providing additional details on how these obligations could be used in U.S. litigation. CHLP is also launching another project—as a reflection of this need—that will focus entirely on helping U.S. HIV advocates apply international human rights norms in domestic advocacy.

C. Cultivating Local Leadership

For Teen SENSE to achieve long-term change in the sexual health care of youth in state custody, this change must be cultivated by local stakeholders—specifically, by advocates and decision makers in each individual jurisdiction. CHLP's role is to "lead from behind" by (1) providing the framework of a national Teen SENSE initiative; (2) organizing a national advisory network to provide expertise and resources; (3) organizing and mobilizing local actors; and (4) providing legal expertise to support the Teen SENSE initiative.

CHLP has created—and is continuing to develop—a national advisory network for the Teen SENSE initiative. The advisory network consists of experts and advocates in fields such as medicine and sexual health, youth health, youth rights, reproductive rights, LGBTQ issues, racial justice, and juvenile justice. The advisory network has been vital to creating and revising the model standards and to providing commentary on the Youth Rights Road Map.

The implementation of the model standards in specific jurisdictions, however, is a project that relies on local ownership. Local actors are in the best position to understand and respond to the needs of their communities. Providing strong local roots not only gives Teen SENSE a stronger place in each jurisdiction, it ensures that leadership is in the hands of those who understand their state system best, and takes advantage of existing knowledge and experience. Moreover, it strengthens existing networks and takes advantage of their existing momentum rather than supplanting them. Local ownership also ensures that Teen SENSE can accomplish long term goals rather than shallow and fleeting changes; leadership by local stakeholders increases the chances that, when standards are implemented, local actors can ensure they are properly implemented and monitor progress. Thus, while CHLP plays a key role in coordinating Teen SENSE, CHLP's goal has always been to coordinate and mobilize local actors by leading from behind.

In the past year CHLP has made significant efforts to coordinate stakeholders in New Jersey to take leadership roles in the Teen SENSE project and has partnered with numerous local advocates and experts. Moreover, in 2007, CHLP secured a commitment from the Office of the Child Advocate (OCA) in New Jersey to spearhead the Teen SENSE initiative in the New Jersey system. The OCA is an independent agency with the power to investigate, review, monitor, and evaluate state agency responses to allegations of child abuse or neglect in New Jersey, and make recommendations for systemic and comprehensive reform. Its jurisdiction extends to all public and private settings in which a child has been placed by a State or county agency or department, including but not limited to, juvenile detention centers, group homes, foster homes, residential treatment centers, and shelters. In 2008, the OCA hosted a Teen SENSE roundtable attended by over 15 local leaders in fields such as juvenile justice, sexual health care, reproductive rights, youth rights, LTBGQ issues, and racial justice. Held over the course of a full day, the roundtable was an enormous success in coordinating local leaders to discuss the Teen SENSE program, and to plan for its next steps.

Teen SENSE is also reaching out to youth for feedback and leadership, recognizing that this initiative cannot adequately address the needs of youth without their inclusion. We are partnering with organizations in New Jersey and beyond to work with youth—many of whom have experience with the state custody system and juvenile detention—to develop model standards that reflect their needs and experiences.

Despite these gains, the mobilization of local actors has been the area in with CHLP has encountered the greatest obstacles. While the Teen SENSE initiative has garnered enormous enthusiasm among our local partners, it has been challenging to translate this enthusiasm into sustained leadership from local actors.

Due to staffing changes and disagreement within the OCA as to its appropriate role in Teen SENSE, the OCA withdrew as a major partner to CHLP's efforts. In light of this change, CHLP strengthened its efforts to coordinate leadership among other local actors, an endeavor that is challenged by the realities of working within our funding. To make progress at a pace that is commensurate with the crisis, significant investment is necessary. Moreover, while local actors found the initiative incredibly important precisely because there was nothing being done about the crisis at issue, this uniqueness meant that the initiative did not fall neatly into many of the existing programs of government agencies or local non-profits. While local stakeholders expressed significant enthusiasm for the project and made efforts to be involved, our partners struggled to commit more time and resources to Teen SENSE without additional funding specific to the project. Unfortunately, current funding for Teen SENSE supports a single staff person at CHLP.

V. CONCLUSIONS AND NEXT STEPS

Teen SENSE has made significant strides in organizing and coordinating a national project devoted to ensuring the sexual health of youth in state custody. It provides a new and more effective way of advocating for sexuality education and LGBTQ rights by demonstrating that sexuality education and an LGBTQ-respectful environment are essential public health needs, and that ignorance and prejudice are public health threats. Based on this principle, it has created a legal foundation and advocacy tool that can be used nationwide. Moreover, it has forged strong alliances that have allowed it to create a set of model standards for the comprehensive sexual health care of youth in state custody. These alliances have created strong networks on the national level and locally in the first jurisdiction in which it seeks to implement its model standards.

However, Teen SENSE also faces significant obstacles. First and foremost among these obstacles is the challenge of instituting a fundamental policy change in state bureaucracies that operate largely hidden from public scrutiny, and that are traditionally sex-phobic, homophobic, and conservative. CHLP is responding to this obstacle in part by creating and sustaining local leadership that includes strong medical and social service professionals, and encouraging a dialogue with policy makers that is respectful and reasonably flexible. Another challenge Teen SENSE faces is integrating strong support under international law into practical tools for Teen SENSE advocates using the Youth Rights Road Map. The complexity of the legal, policy and organizing issues merit increased staffing, and additional funding to ease the participation of some of our Teen SENSE partners.

In its next steps, CHLP will finalize the Youth Rights Road Map and the model standards; grow its national interdisciplinary advisory network, and cultivate additional local leadership in New Jersey. CHLP plans to tackle the challenge of local leadership by seeking out new collaborators and team members among those who work within the New Jersey government, as well as with those who have significant experience with it and can navigate the terrain. CHLP is specifically targeting local leaders who are able to dedicate the time and resources to lead. From this group, CHLP will help to create a structure, through a special steering committee, that allows local leaders to work collaboratively and to provide leadership to other local players who are unable to take on as significant roles. While CHLP will continue to lead from behind, we anticipate that eventually this steering committee will take greater ownership of the project and help to keep on track the implementation of a strategy for adoption of policies based on our model standards in New Jersey. CHLP also will help to form and coordinate youth committees to ensure that the initiative reflects their needs and experiences.

Finally, CHLP will begin focusing on at least one new jurisdiction in which to implement Teen SENSE over the next year. We will adapt an initial legal and policy strategy to that jurisdiction and begin cultivating ties with local actors there, specifically targeting public, private, and non-profit leaders who can provide leadership for the project.

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February 2009